

25. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* The statute also requires incumbent LECs to provide "timely information on the planned deployment of telecommunications services and equipment" to any parties to infrastructure sharing agreements.⁴⁶⁸ The rules we adopt herein require disclosure by each providing incumbent LEC for each of its section 259-derived agreements and require that such notice and disclosure are only for the benefit of the parties to a section 259-derived agreement. Under our rules, providing incumbent LECs must provide notice of changes in their networks that might affect qualifying carriers' ability to utilize the shared infrastructure. Should a small incumbent LEC be subject to this requirement, we anticipate that it will require use of engineering, technical, operational, and administrative skills.

26. *Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* A number of parties suggest that the Commission need not adopt any new disclosure rules pursuant to section 259(c) because other network disclosure provisions provide similar notice of changes in the network.⁴⁶⁹ We conclude that specific notice of changes to an incumbent LEC's network that affect a qualifying carrier's ability to utilize the shared infrastructure, a qualifying carrier -- including small businesses -- will enable qualifying carriers, including small entities, to maintain a high level of interoperability between its network and that of the providing incumbent LEC.

27. We also decide that section 259(c) does not include a requirement that providing incumbent LECs provide information on planned deployments of telecommunications and services prior to the make/buy point. We conclude that section 259 does not require such mandatory joint planning, but we note that providing incumbent LECs may have obligations to coordinate network planning and design under sections 251(a), 256, 273(e)(3) and other provisions.

4. Section 259(d) Definition of Qualifying Carriers

28. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* We adopt a rebuttable presumption that carriers satisfying the statutory definition of "rural telephone company" in section 3(37) also satisfy the qualifying criteria in section 259(d)(1) of lacking "economies of scale or scope," but we decide to exclude no class of carriers from attempting to show that they qualify under section 259(d)(1).⁴⁷⁰ A carrier otherwise qualifying under section 259(d) therefore may be entitled to request and share certain infrastructure and, at the same time, be obligated to share the same or other infrastructure. We conclude that parties to section 259 negotiations can and will make the necessarily fact-based evaluations of their relative economies of scale and scope pertaining to the infrastructure that is

⁴⁶⁸ See *Infrastructure Sharing Report and Order* at Section III. D., *supra*.

⁴⁶⁹ See, e.g., NYNEX Comments at 16-17; GTE Comments at 12.

⁴⁷⁰ See *Infrastructure Sharing Report and Order* Discussion at Section III. E., *supra*.

requested to be shared. Complying with the section 259 process set out in our rules may require small incumbent LECs and requesting small entities to use legal and negotiation skills.

29. *Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* We believe that the approach we take will facilitate negotiations between requesting carriers and incumbent LECs. We expect that many if not most requests for infrastructure sharing agreements will be made by carriers whose customers reside predominantly, if not exclusively, in rural, sparsely-populated areas.⁴⁷¹ At the same time, there is nothing in the statutory language or legislative history to persuade us that Congress intended such a *per se* restriction on who can qualify under section 259(d). Thus, we rejected proposals that we limit qualifying carriers to those who meet the requirements of section 3(37).⁴⁷² We opposed these proposals because they would unduly limit the opportunities to engage in section 259 sharing agreements to those qualifying carriers located in particular geographic areas. We believe that the approach that we have adopted will enable all small entity qualifying carriers to enjoy the benefits of section 259 sharing agreements without regard to their geographic location.

F. Report to Congress

30. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801 (a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

⁴⁷¹ See RTC Comments at 19-20 (urging the Commission to adopt a rebuttable presumption in favor of "rural telephone companies").

⁴⁷² See NCTA Comments at 3.